THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.24178 OF 2003 AND 12553 OF 2004

DATED 11th OCTOBER, 2006

BETWEEN

Kanaparthi Venkateswara Rao and others

… Petitioners

and

The District Collector, Krishna at Machilipatnam and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.24178 OF 2003 AND 12553 OF 2004

COMMON ORDER:

As these two writ petitions came to be filed in the similar background, it is appropriate to dispose of both the matters by common order.

The petitioners herein encroached upon the Government land in survey Nos.35, 36 and 312 of Pamarru village (hereafter called, the subject land) and raised residential premises about twenty five years ago. The said land is classified as 'cart track poramboke'. They allege that though they occupied thirty square yards of poramboke land each, the same does not in any manner prevent users of the cart track from using it regularly. The revenue officials issued ration cards, the electricity corporation issued power connections and all the petitioners were also given voter cards.

The petitioners requested the revenue officials to issue house site pattas to them. When the enquiry was being conducted in that direction, three villagers filed writ petition being W.P.No.14228 of 1999 before this Court seeking a writ of Mandamus directing revenue authorities to remove encroachments from the cart track on the subject land. This Court disposed of the writ petition directing the Mandal revenue Officer (MRO) and others to take appropriate action for removal of the encroachments on the donka road. The order in the said writ petition, dated 01.03.2000, was affirmed by the Division Bench in writ appeal being W.A.No.388 of 2000, dated 07.06.2000. Be that as it is, the petitioners in W.P.No.12553 of 2004 filed W.P.No.13046 of 2000 seeking a writ of Mandamus to revenue officials to regularize the house sites of the petitioners in the light of the orders of the Government in G.O.Ms.No.972, dated 04.12.1998. The writ petition came to be filed when the Revenue Divisional Officer, Gudivada (RDO), issued notice, dated 07.07.2000, purportedly under Section 7 of the A.P.Land Encroachment Act, 1905. This Court disposed of the writ petition on 23.01.2002 giving liberty to the petitioners therein to approach the RDO and file explanation to the notice. The RDO was also directed to pass appropriate orders taking into consideration the fact that the encroachers have been living on the land for more than twenty years. Thereafter, the present writ petitions came to be filed seeking a direction to the respondents, i.e., revenue officials, to issue house site pattas to the petitioners. The petitioners allege that without considering the request for assignment, the respondents are trying to dispossess the petitioners from the subject land.

In the counter affidavit filed in W.P.No.12553 of 2004, the MRO elaborately traced the history of the case. A reference is made to BSO 15 (4)(ii)(m) of Board Standing Orders, which prohibits assignment of land

classified as 'cart track poramboke'. It is further stated that after disposal of the writ petition being W.P.No.13046 of 2000, the RDO passed orders on 21.05.2003 directing the MRO to take necessary action to evict the encroachers from the cart track. It is further stated that all the petitioners have been allotted alternative house sites in the land comprised in R.S.No.91/1 of Pamarru village vide patta proceedings Rc.No.B.770/98, dated 20.01.2004.

The learned counsel for the petitioners submits that though the petitioners are in occupation of the subject land classified as 'cart track poramboke', their occupation is not objectionable as only a portion of the cart track was occupied by the petitioners. Secondly, it is contended that considering the request of the petitioners, the MRO initiated steps for re-classify the subject land into assessed waste dry, in which event, there cannot be any objection for assigning the land to the petitioners. **Per contra**, the learned Assistant Government Pleader for Revenue and the learned counsel for the contesting respondents in W.P.No.12553 of 2004 submit that when the orders passed by the RDO on 21.05.2003 directing the eviction of the petitioners from the 'cart track poramboke' have become final and that petitioners have already been allotted alternative house site in R.S.No.91/1.

There is no dispute that the petitioners are in occupation of the subject land, which is classified as 'cart track poramboke'. There is also no dispute that though initially the MRO opined that there is no need to evict the petitioners from 'cart track poramboke', having regard to the BSO-15 (4)(iii), subsequently the RDO passed orders for eviction of the petitioners. When there is a clear prohibition in the Board Standing Orders for assessing land classified as 'cart track', the power of this Court cannot be exercised to issue a Mandamus to the public authorities to act contrary to law and issue pattas on the land where assignments are prohibited. Further more, though an averment is made that the petitioners were given alternative house sites, there is no demur by the petitioners to the said fact. The petitioners have not produced any material to show that the District Collector, the competent authority – has issued proceedings

re-classifying the subject land into assessed waste dry. In view of this, the relief prayed cannot be granted.

The writ petitions are devoid of merit and are accordingly dismissed. There shall be no order as to costs.

(V.V.S.RAO,J)

11.10.2006.
pln